

In the Matter of the Compensation of  
**DIANE CORT-WAGNER, Claimant**  
WCB Case No. 22-00401  
ORDER ON REVIEW  
Ivan S Zackheim, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Ousey and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the SAIF Corporation's denial of claimant's injury claim for left rib, clavicle, and shoulder conditions. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.

The ALJ determined that the record did not establish that claimant's December 1, 2021, fall at work was a material contributing cause of the need for treatment or disability of the claimed conditions. Accordingly, the ALJ upheld SAIF's denial.

On review, claimant contends that her work activities were causative of her left rib, clavicle, and shoulder conditions. Based on the following reasoning, we disagree with claimant's contention.

Claimant must prove both legal and medical causation by a preponderance of the evidence. *See Harris v. Farmer's Co-op Creamery*, 53 Or App 618, *rev den*, 291 Or 893 (1981); *Caryolyn F. Weigel*, 53 Van Natta 1200 (2001), *aff'd without opinion*, 184 Or App 761 (2002). Legal causation is established by showing that claimant engaged in potentially causative work activities; whether those work activities caused claimant's disability or need for treatment is a question of medical causation. *See Robert L. Cross*, 72 Van Natta 108 (2020); *Darla Litten*, 55 Van Natta 925, 926 (2003).

To establish the compensability of her injury claim, claimant has the burden of proving that a work event was a material contributing cause of her disability or need for treatment. *See ORS 656.005(7)(a); ORS 656.266(1); Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992).

This claim presents a complex medical question that must be resolved by expert medical opinion. *See Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Caitlin A. Stanphill*, 73 Van Natta 856, 856 (2021). We give more weight to opinions that

are well reasoned and based on complete information. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003); *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Jayden S. Smytherman*, 74 Van Natta 602, 604 (2022).

To begin, we consider the credibility of the witnesses. In determining the credibility of a witness's testimony, we normally defer to an ALJ's demeanor-based credibility findings. See *Erck v. Brown Oldsmobile*, 311 Or 519, 526 (1991). Because the ALJ did not make demeanor-based credibility findings, we are equally qualified to evaluate the conflicting testimony. See *Coastal Farm Supply v. Hultberg*, 84 Or App 282, 285 (1987); *Bradley D. Martinkovich*, 70 Van Natta 226, 227 (2018).

We are not persuaded by claimant's explanation of her inconsistent statements regarding her rib, clavicle, and shoulder conditions. Specifically, a coordinator for claimant's employer sent claimant an email on December 1, 2021, acknowledging that claimant fell at work that day and requesting that claimant fill out an 801 form and incident form. (Ex. 10A). Also on December 1, 2021, claimant responded to the email, thanking the coordinator. (*Id.*) Later on December 1, 2021, claimant underwent chest x-rays that showed no acute-appearing findings. (Exs. 8, 10). Acute rib, clavicle, and shoulder findings did not appear until a December 13, 2021, chest CT scan, where findings included left third, fourth, and fifth ribs fractures, a slightly displaced left lateral clavicular fracture, and healed posterior and lateral left rib fractures. (Ex. 13).

To explain the discrepancy between the reported injurious work event on December 1, 2021, and lack of acute x-ray findings on that date, claimant testified that the injurious work event occurred on December 2, 2021. (Tr. 6). Yet, that explanation does not account for the December 1, 2021, email from claimant's employer, acknowledging a fall at work and requesting that she complete an incident report. (See Ex. 10A).

Moreover, claimant noted on the 801 form (which she filled out on December 3, 2021) that she was injured on December 1, 2021. (Ex. 11). She also relayed to Dr. Ballard, who examined her at SAIF's request, that she sustained her left clavicle and rib fractures on December 1, 2021. (Ex. 20-13). However, when confronted with the inconsistencies between the December 1, 2021, injury date and her lack of verifiable injuries until December 13, 2021 (given her "normal" x-rays on December 1, 2021), claimant told Dr. Ballard that she was actually injured on December 8, 2021. (*Id.*)

Under such circumstances, and without further explanation regarding the inconsistencies in claimant's reports and testimony, we find claimant's statements to be unreliable and inconsistent with the record. *See Hilda B. Becerra-Gomez*, 71 Van Natta 1196, 1201 (2019) (discounting the claimant's inconsistent testimony); *Ryan E. Jones*, 63 Van Natta 2367, 2371 (2011) (the claimant's testimony that was inconsistent with the medical records was unreliable).

As a result of the above inconsistencies, and claimant's unreliability, we are not persuaded by Dr. Adams's opinion, which supported compensability. Despite claimant's statements that were inconsistent with the medical record, Dr. Adams relied on the history provided by claimant in determining that a material and the major cause of claimant's conditions was the work event. (Ex. 19C). Consequently, because his opinion was based on an inaccurate and unreliable history, we discount his opinion. *See Miller v. Granite Const. Co.*, 28 Or App 473, 476 (1977) (physician's opinion that was based on an inaccurate history was unpersuasive); *Rocio C. Casasola*, 69 Van Natta 893, 896 (2017) (physician's opinion based on the claimant's unreliable history was unpersuasive).

No other medical opinion in the record persuasively supports the compensability of claimant's left rib, clavicle, and shoulder conditions. Accordingly, based on the aforementioned reasoning, as well as that contained in the ALJ's order, we find the opinion of Dr. Adams insufficient to persuasively establish the compensability of claimant's left rib, clavicle, and shoulder conditions. Consequently, we affirm the ALJ's order that upheld SAIF's denial.

### ORDER

The ALJ's order dated October 20, 2022, is affirmed.

Entered at Salem, Oregon on May 26, 2023